

Exhibit A

Lawrence C. Stewart

August 4, 2009

Page 1

Exhibits: 1-21 Volume 1, Pages 1 - 126

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

Civil Action No. 6:07-CV-511

SOVERAIN SOFTWARE LLC,

Plaintiff

v.

CDW CORPORATION, NEWEGG INC.,

REDCATS USA, INC., SYSTEMAX, INC.,

ZAPPOS.COM, INC., TIGER DIRECT,

INC., THE SPORTSMAN'S GUIDE, INC.,

and REDCATS USA LP,

Defendants

VIDEOTAPED DEPOSITION OF LAWRENCE C. STEWART

Tuesday, August 4, 2009, 8:51 a.m.

Farmer Arsenault Brock LLC

50 Congress Street, Suite 415

Boston, Massachusetts

-----Reporter: Susan J. Blatt, RPR-----

All New England Reporting Service, LLC

9 Hammond Street, Worcester, Massachusetts 01610

508-753-9292/Fax 508.753.9284

Lawrence C. Stewart

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	Page 2		Page 4
1	APPEARANCES:		
2		08:52:44 1 Software and Dr. Stewart.	
3	Jones, Day, Reavis & Pogue	08:52:52 2 LAWRENCE C. STEWART, sworn	
4	Clark Craddock, Ph.D., Esq.	08:52:53 3 EXAMINATION	
5	Thomas L. Giannetti, Esq.	08:52:55 4 BY MR. HANSON:	
6	222 East 41st Street	08:52:55 5 Q. Dr. Stewart, will you state your full name,	
7	New York, New York 10017-6702	08:52:58 6 please.	
8	212.326.3939 Fax: 212.755.7306	08:52:58 7 A. Lawrence Colm Stewart.	
9	ccraddock@jonesday.com	08:53:01 8 Q. And what is your residence?	
10	tlgianetti@jonesday.com	08:53:03 9 A. In Wayland, Massachusetts.	
11	for Plaintiff	08:53:04 10 Q. In what year were you born?	
12		08:53:06 11 A. 1955.	
13	The Webb Law Firm	08:53:08 12 Q. And by whom are you employed?	
14	David C. Hanson, Esq.	08:53:10 13 A. Serissa Research.	
15	Kent E. Baldauf, Esq.	08:53:13 14 Q. And how long have you worked for Serissa	
16	700 Koppers Building	08:53:18 15 Research?	
17	Pittsburgh, Pennsylvania 15219-1845	08:53:18 16 A. Since 2001.	
18	412.471.8815 Fax: 412.471.4094	08:53:22 17 Q. And who did you work for before that?	
19	dhanson@webblaw.com	08:53:25 18 A. Open Market.	
20	kbaldauf@webblaw.com	08:53:29 19 Q. Are you being compensated for your	
21	for Newegg Inc.	08:53:39 20 appearance here today?	
22		08:53:40 21 A. I am being compensated for my time, but not	
23	Also Present:	08:53:45 22 for testimony.	
24	Edward Tittel	08:53:46 23 Q. And at what hourly rate are you being	
		08:53:49 24 compensated?	
08:35:19 1	P R O C E E D I N G S		
08:35:19 2	THE VIDEOGRAPHER: We are now recording		
08:51:22 3	and on the record. My name is Odi J. Wong. I'm a	08:53:50 1 A. Let me see if I remember. I think it is	
08:51:26 4	legal video specialist for National Video Reporters,	08:53:54 2 about \$400 an hour.	
08:51:30 5	Inc. The business address is 71 Commercial Street,	08:53:57 3 Q. And did you meet with counsel in the near	
08:51:33 6	Suite 274, Boston, Massachusetts 02109. Today's	08:54:02 4 past to discuss preparation for this deposition?	
08:51:40 7	date is the 4th of August, 2009 and the time is 8:51	08:54:05 5 A. I did.	
08:51:45 8	a.m. This is the deposition of Dr. Lawrence C.	08:54:06 6 Q. And for how many hours did you meet with	
08:51:49 9	Stewart in the matter of Soverain Software LLC	08:54:09 7 them?	
08:51:53 10	versus CDW Corporation, et al. in the United States	08:54:09 8 A. Maybe six.	
08:51:58 11	District Court, Eastern District of Texas, Tyler	08:54:14 9 Q. Do you have any financial interest in the	
08:52:02 12	Division, Civil Action 6:07-CV-511. This deposition	08:54:17 10 outcome of this lawsuit?	
08:52:08 13	is being taken at Farmer Arsenault Brock at 50	08:54:18 11 A. I do not.	
08:52:13 14	Congress Street, Boston, Massachusetts. The court	08:54:20 12 Q. Do you own any stock in Soverain?	
08:52:15 15	reporter is Susan Blatt of All New England Court	08:54:23 13 A. I do not.	
08:52:19 16	Reporting.	08:54:25 14 Q. Do you still own any stock in Open Market?	
08:52:19 17	Counsel, please state your appearances	08:54:28 15 A. I have some wallpaper from Open Market, I	
08:52:21 18	for the record and the court reporter will	08:54:32 16 think, but, no, it is, as far as I know, of no	
08:52:23 19	administer the oath.	08:54:35 17 value.	
08:52:25 20	MR. HANSON: David Hanson and Kent	08:54:36 18 Q. And how did you acquire stock for Open	
08:52:28 21	Baldauf of The Web Law Firm on behalf of Newegg; and	08:54:39 19 Market?	
08:52:32 22	also present is Ed Tittel, expert assisting us.	08:54:39 20 A. I acquired founders' stock when the company	
08:52:38 23	MS. CRADDOCK: Clark Craddock and Tom	08:54:42 21 was started.	
08:52:42 24	Giannetti of Jones Day representing Soverain	08:54:44 22 Q. Did you ever sell any of your founders'	
		08:54:49 23 stock?	
		08:54:49 24 A. I did.	

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<p>09:36:56 1 it in the system of that day.</p> <p>09:37:00 2 Q. Would one of the ways be looking at the IP</p> <p>09:37:03 3 address of the user?</p> <p>09:37:05 4 A. Not in the software we developed as of that</p> <p>09:37:10 5 time, no.</p> <p>09:37:13 6 Q. What were the other ways that you could do</p> <p>09:37:15 7 it?</p> <p>09:37:15 8 A. I believe another technique is that the</p> <p>09:37:18 9 server issues an HTTP 302 redirect telling the user</p> <p>09:37:24 10 retry using this URL that now has the ticket in it,</p> <p>09:37:29 11 and that replaces the first request with a revised</p> <p>09:37:37 12 first request that now has the ticket.</p> <p>09:37:40 13 Q. Was there any way during 1994 to use the</p> <p>09:37:52 14 basic authorization feature of HTTP to craft</p> <p>09:38:04 15 sessions?</p> <p>09:38:04 16 A. Are you referring to basic authentication?</p> <p>09:38:12 17 Q. Yes, sir.</p> <p>09:38:13 18 A. Okay. I don't recognize "basic</p> <p>09:38:17 19 authorization" as the term.</p> <p>09:38:18 20 Q. I'm sorry.</p> <p>09:38:20 21 A. I believe there is something about this in</p> <p>09:38:24 22 my book. Hang on a second.</p> <p>09:38:38 23 If you have an authentication mechanism,</p> <p>09:38:41 24 you can use it to make a sort of a poor shadow copy</p>	<p>09:43:55 1 1994. Later on we had something much like this. I</p> <p>09:43:59 2 think in 1995.</p> <p>09:44:02 3 Q. How does this differ from what was done in</p> <p>09:44:04 4 1994?</p> <p>09:44:05 5 A. This is a description of a shrink-wrapped</p> <p>09:44:10 6 software product that you would load onto your own</p> <p>09:44:12 7 PC and build content. What we developed in 1994 was</p> <p>09:44:16 8 called Online Store Builder that was an interactive</p> <p>09:44:20 9 process with a Web browser for the user and a Web-</p> <p>09:44:27 10 server-based implementation of the store building</p> <p>09:44:30 11 system.</p> <p>09:44:31 12 Q. Now, there's mention in the second line of</p> <p>09:44:37 13 this first paragraph of the Open Mall. Was that a</p> <p>09:44:46 14 project that was taken up during 1993 by Open</p> <p>09:44:51 15 Market?</p> <p>09:44:51 16 A. No.</p> <p>09:44:52 17 Q. I'm sorry. In '94?</p> <p>09:44:57 18 A. Yes.</p> <p>09:44:57 19 Q. Can you describe how that was taken up.</p> <p>09:45:01 20 A. I think this is an early name for the idea</p> <p>09:45:04 21 of Open Market itself operating a mall, namely, a</p> <p>09:45:11 22 collection of online merchants that came to</p> <p>09:45:15 23 commercial fruition as the Open Marketplace in</p> <p>09:45:18 24 October.</p>
Page 31	Page 33
<p>09:38:44 1 of the session mechanism. It doesn't do what you</p> <p>09:38:49 2 want in several ways, but within limited</p> <p>09:38:52 3 circumstances you can use it for sessions.</p> <p>09:38:53 4 Q. Could it be used for a commercial product?</p> <p>09:38:56 5 A. I'm sure I don't know what, what all</p> <p>09:39:01 6 commercial products could be, so I don't think I can</p> <p>09:39:04 7 say one way or the other.</p> <p>09:39:28 8 MR. HANSON: I'm going to ask the</p> <p>09:39:30 9 reporter to mark as Exhibit 3 a document that was</p> <p>09:39:39 10 produced bearing production numbers SVN2-00039958</p> <p>09:39:48 11 through 60, and it bears a date of May 5, 1994 and a</p> <p>09:39:56 12 title Store Building Kit.</p> <p>09:40:07 13 (Marked, Exhibit 3, document,</p> <p>09:40:11 14 SVN2-00039958 - 60.)</p> <p>09:43:16 15 Q. Did you prepare this document?</p> <p>09:43:18 16 A. It's -- I think so, yes.</p> <p>09:43:23 17 Q. Was this prepared during that period of</p> <p>09:43:25 18 time when you were working at home or was this</p> <p>09:43:30 19 prepared later?</p> <p>09:43:30 20 A. You know, I don't know the answer. I don't</p> <p>09:43:33 21 know when we moved into our first offices. The...</p> <p>09:43:40 22 Q. Did Open Market eventually design something</p> <p>09:43:45 23 referred to as the store building kit or the like?</p> <p>09:43:48 24 A. Not in -- we did it a different way in</p>	<p>09:45:23 1 Q. On page 3, the second-to-the-last paragraph</p> <p>09:45:48 2 begins, "There might be (at least) two classes of</p> <p>09:45:58 3 merchants who would use the kit. The first class</p> <p>09:46:02 4 are folks who are already plugged into the Internet</p> <p>09:46:06 5 and have seen things like Mosaic (or at least have</p> <p>09:46:10 6 seen AOL or CompuServe)."</p> <p>09:46:15 7 What was your knowledge of AOL at the</p> <p>09:46:18 8 time of preparing this document?</p> <p>09:46:22 9 A. I believe I had seen other people using it.</p> <p>09:46:25 10 I did not myself have an account or myself have used</p> <p>09:46:29 11 it.</p> <p>09:46:29 12 Q. Do you know what other people you had seen</p> <p>09:46:31 13 using it?</p> <p>09:46:32 14 A. No.</p> <p>09:46:35 15 Q. Had you seen them using it for purchase</p> <p>09:46:39 16 of -- for making purchases of products?</p> <p>09:46:41 17 A. I'm pretty sure not.</p> <p>09:46:44 18 Q. At the time of this memo, what was your</p> <p>09:46:48 19 knowledge of CompuServe?</p> <p>09:46:50 20 A. I knew it to be an online service but one</p> <p>09:46:55 21 disconnected from the Internet.</p> <p>09:46:59 22 Q. And what kind of services did CompuServe</p> <p>09:47:03 23 provide that you knew of at the time?</p> <p>09:47:04 24 A. My general understanding, it was sort of a</p>

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	Page 34		Page 36
09:47:09 1	<u>commercial time-sharing service. You could get an account and you could log into it, and I actually don't know what you could do once you got there.</u>	09:56:03 1	assistant.
09:47:13 2		09:56:04 2	Q. So Kim Alley wasn't present according to this?
09:47:15 3		09:56:08 3	A. According to this, nobody else was present, right.
09:47:19 4	<u>Q. Did you have any familiarity with a thing known as the CompuServe mall at the time of preparing this document?</u>	09:56:08 4	Q. I believe if you go to the last page, second-to-last page of this document, I think it appears at number 85, there's an indication that Mr. Treese was under consideration for becoming an employee?
09:47:22 5	<u>A. I did not.</u>	09:56:11 5	A. It looks that way, yes.
09:47:25 6	Q. Who was assigned to build the Open Marketplace software?	09:56:12 6	Q. As was Mr. Mackie?
09:47:26 7	A. There -- that pretty much encompasses all of the software that Open Market was working on, so I suppose everybody in engineering was working on it in one way or another.	09:56:16 7	A. I don't see the reference to Mackie.
09:47:51 8	Q. Did any individual have the heavy oar, so to speak?	09:56:23 8	Q. Well, in the sentence following Win Treese.
09:47:56 9	A. It's difficult to say which is the heavy oar. I think fundamentally I was working on the transaction system. Dave Mackie was working on the Online Store Builder aspects of it. Andy Payne worked on servers and infrastructure and the mall machinery. Henry Tumblin worked on payment processing and interactive voice response. Win Treese worked on security and authentication issues.	09:56:34 9	A. Ah, I have it, yes.
09:47:58 10	That's a rough breakdown, but we all worked on	09:56:42 10	Q. So at that time they were probably not employees of Open Market? "At that time" being the date of this document.
09:48:07 11		09:56:42 11	A. I believe that's correct.
09:48:09 12		09:56:43 12	Q. Now, going back to the first page, in a paragraph that begins "Stage 2:" There is reference to the Future Fantasy Bookstore. And my question to you is what was your knowledge of the Future Fantasy Bookstore at the time of this email?
09:48:12 13		09:56:45 13	
09:48:14 14		09:56:51 14	
09:48:19 15		09:56:56 15	
09:48:20 16		09:57:01 16	
09:48:27 17		09:57:05 17	
09:48:30 18		09:57:10 18	
09:48:34 19		09:57:11 19	
09:48:37 20		09:57:18 20	
09:48:41 21		09:57:26 21	
09:48:47 22		09:57:30 22	
09:48:48 23		09:57:35 23	
09:48:54 24		09:57:39 24	
	Page 35		Page 37
09:48:57 1	everything.	09:57:41 1	A. I had been to the physical store when I was in Palo Alto, so I had that much knowledge of it. I don't know whether I had been to visit the website, for example, or knew anything about the store before this meeting.
09:49:05 2	MR. HANSON: I'm going to ask the reporter to mark as Exhibit 4 a document that was produced with production numbers SVN2-0039679 through 86. It appears to be an email dated 8 May 1994.	09:57:50 2	Q. And at this meeting who related the information which raised, "Another example is the Future Fantasy Bookstore, which is resident on a DEC World Wide Web server in Palo Alto"?
09:49:07 3	(Marked, Exhibit 4, email, SVN2-0039679 - 86.)	09:57:54 3	A. I don't know for sure. Probably Andy.
09:49:12 4		09:57:59 4	Q. Did you come to have any more specific understanding of the Future Fantasy Bookstore website subsequent to the date of this email?
09:49:20 5		09:58:01 5	A. I did.
09:49:33 6		09:58:05 6	Q. And what was that knowledge?
09:49:36 7		09:58:09 7	A. At some point I think I went to visit the website, looked at the -- looked at some number of the screens.
09:49:39 8		09:58:14 8	Q. Was that during 1994?
09:55:12 9	Q. Did you prepare this email?	09:58:20 9	A. Very likely yes, during the summer of '94, sometime between here and mid-summer, probably.
09:55:14 10	A. I have no reason to think I didn't. I think I did.	09:58:25 10	Q. During that period of time, did you visit any other commercial websites, meaning websites that offered products for sale?
09:55:18 11	Q. Does it relate to one of the early meetings that you mentioned earlier?	09:58:33 11	
09:55:25 12		09:58:36 12	
09:55:27 13		09:58:43 13	
09:55:28 14	A. I think it does.	09:58:49 14	
09:55:34 15	Q. Is the Shikhar referred there Mr. Ghosh?	09:58:50 15	
09:55:41 16	A. Shikhar, yes, it is.	09:58:52 16	
09:55:41 17	Q. Shikhar?	09:58:59 17	
09:55:43 18	A. That's correct.	09:59:04 18	
09:55:43 19	Q. And Andy refers to Andy Payne?	09:59:06 19	
09:55:46 20	A. That's correct.	09:59:10 20	
09:55:46 21	Q. And Cathy -- no. Who is Cathy?	09:59:14 21	
09:55:52 22	A. I think I'm in trouble here. That's misspelled. It's Kathy with a K. I think that's	09:59:17 22	
09:55:56 23	Kathy Matthews, who is Shikhar's administrative	09:59:22 23	
09:55:59 24		09:59:30 24	

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Page 122	Page 124
14:51:16 1 break.	1
14:51:16 2 MR. GIANNETTI: Give us a five-minute	2
14:51:18 3 break.	3
14:51:19 4 MR. HANSON: Certainly.	4
14:51:20 5 THE VIDEOGRAPHER: Going off the record.	5
14:51:22 6 The time is 2:51.	6
14:51:24 7 (Brief recess.)	7
14:58:47 8 THE VIDEOGRAPHER: Going back on the	8
14:59:02 9 record. The time is 2:59.	9
14:59:06 10 MS. CRADDOCK: Counsel, we have no	10
14:59:08 11 questions.	11
14:59:14 12 THE VIDEOGRAPHER: The time is 2:59 and	12
14:59:16 13 the deposition is concluded. We're off the record.	13
14 (2:59 p.m.)	14
15	15
16	16
17	17
18	18
19	19
20	20
21	21
22	22
23	23
24	24
Page 123	
1 CERTIFICATE OF COURT REPORTER	1
2	18, Appendix G. 90
3	19, document, SVN2-0039906. 103
4	20, document, SVN2-0039907. 103
5	21, excerpts from book. 104
6 I, Susan J. Blatt, Registered	5
7 Professional Reporter, do certify that the	6
8 deposition of LAWRENCE C. STEWART, in the matter of	7
9 Soverain v CDW, et al., on August 4, 2009, was	8
10 stenographically recorded by me; that the witness	9
11 provided satisfactory evidence of identification, as	10
12 prescribed by Executive Order 455 (03-13) issued by	11
13 the Governor of the Commonwealth of Massachusetts,	12
14 before being sworn by me, a Notary Public in and for	13
15 the Commonwealth of Massachusetts; that the	14
16 transcript produced by me is a true and accurate	15
17 record of the proceedings to the best of my ability;	16
18 that I am neither counsel for, related to, nor	17
19 employed by any of the parties to the above action;	18
20 and further that I am not a relative or employee of	19
21 any attorney or counsel employed by the parties	20
22 thereto, nor financially or otherwise interested in	21
23 the outcome of the action.	22
24	23
Transcript review was requested of the reporter.	24
Exhibits returned to Mr. Hanson	
Susan J. Blatt, RPR	
August 12, 2009	

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WITNESS: LAWRENCE C. STEWART

CASE: Soverain v CDW, et al.

SIGNATURE PAGE/ERRATA SHEET

PAGE LINE CHANGE OR CORRECTION AND REASON

I have read the transcript of my deposition taken August 4, 2009. Except for any corrections or changes noted above, I hereby subscribe to the transcript as an accurate record of the statements made by me.

Signed under the pains and penalties of perjury.

DATE _____

Deponent, **LAWRENCE C. STEWART**

On this _____ day of _____, 200_____, before me, the undersigned notary public, personally appeared **LAWRENCE C. STEWART**, who presented satisfactory evidence of identification, to wit, _____, and signed this document in my presence.

Notary Public in and for _____
My commission expires _____

LAWRENCE C. STEWART

SIGNATURE PAGE/ERRATA SHEET INFORMATION

For deposition taken on: August 4, 2009

Soverain v CDW, et al.

A separate signature page/error sheet has been sent to Clerk.

The original signature page/errata sheet has been sent to Clark Craddock, Esq. to obtain signature from the deponent. When complete, please send original to David C. Hanson, Esq. A copy of any errata should be sent to each party of record present at the deposition.

WITNESS INSTRUCTIONS

After reading the transcript of your deposition, please note any change or correction and the reason on the errata/signature page. DO NOT make any notations on the transcript itself. If

necessary, continue the format on a separate page.

PLEASE SIGN AND DATE the errata/signature page (before a notary if requested) and return it to your counsel.

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